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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,204	07/03/2003	James M. Rozell	17200-098	4597
54205 7590 04/02/2009 CHADBOURNE & PARKE LLP 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			EXAMINER JARRETT, SCOTT L	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/613,204	Applicant(s) ROZELL ET AL.	
	Examiner SCOTT L. JARRETT	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This **Final** Office Action is in response to Applicant's amendment filed February 27, 2009. Applicant's amendment amended claims 1-25. Currently claims 1-40 are pending with claims 26-40 being withdrawn as directed to a non-elected invention.

Response to Amendment

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action.

The Objection to Claims 5, 13, 20, and 25 in the previous office action is withdrawn in response to Applicant's amendments to the claims.

The 35 U.S.C. 112(2) rejection of claims 1-25 in the previous office action is withdrawn in response to Applicant's amendments to the claims.

The 35 U.S.C. 101 rejection of claims 1-25 in the previous office action is withdrawn in response to Applicant's amendments to the claims.

Response to Arguments

3. Applicant's arguments with respect to claims 1-25 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed February 27, 2009 have been fully considered but they are not persuasive. Specifically Applicant's argue that the prior art of record fails to

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teach or suggest a hotel marketability score index (Remarks: Paragraphs 1, 3, Page 16).

In response to Applicant's argument that the prior art of record fails to teach or suggest a hotel marketability score index the examiner specifically disagrees.

Initially it is noted that the phrase 'hotel' has been given its broadest reasonable interpretation in light of the specification and knowledge to those skilled in the art at the time of the invention, generally the phrase hotel as been interpreted to mean a location where travelers can pay for lodging and meals and other services and/or an establishment that provides paid lodging, usually on a short-term basis.

Kowh, U.S. Patent Publication No. 2001/0034625 teaches a system and method for evaluating travel accommodations comprising determining a hotel marketability index score (i.e. hotel/accommodation ratings, # of stars, hotel rankingParagraph 37 - "FIG. 5 shows an exemplary database of hotel information...the ranking of the hotel in terms of the number or stars...hotels of a specified number of starts..."; Paragraph 46, "A use may enter the hotel information by selected a give star categorization of a hotel...the hotels maybe subdivided into five-star hotels, four-star hotels...."; Figure 5, Element 42; Figure 9, Element 80; Figure 10, Element 100).

Further it is noted that it is old and very well known to score, rate, rank or otherwise evaluate on a scale (ordinal or otherwise) hotels wherein consumers have long used such evaluations to select one or more types of travel accommodations/products.

Claim Objections

4. Claims 4, 7, 12, 14, 18 and 20 are objected to because of the following informalities.

Claims 4, 12 and 18 are objected to because of the following informalities: claims 4, 12 and 18 recite that the cluster location *is modifiable* however the claims as currently recited do not actually modify the cluster location to account for densely populated area. Examiner assumes applicant will amend the claims to positively recited that the cluster location is modified to account for densely populated area for the purposes of examination. Appropriate correction is required.

Claim 7 is objected to because of the following informalities: claim 7 recites that the data included in the memory *is modifiable* however the claims as currently recited do not actually modify data. Examiner assumes applicant will amend the claims to positively recited that data is modified by a system administrator for purposes of examination. Appropriate correction is required.

Claims 8, 14 and 20 are objected to because of the following informalities: claims 8, 14 and 20 recites that the data/characteristics are normalizable however the claims as currently recited do not actually normalize the data/characteristics. Examiner assumes the applicant will amend the claims to positively recited that data/characteristics are normalized for purposes of examination. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5-6, 8-11, 13-18 and 19-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwoh, U.S. Patent Publication No. 2004/0199429 and further in view of Schneider et al., U.S. Patent No. 5,832,452.

Regarding Claims 1, 9, 15 and 25 Kwoh teach a system and method for evaluating travel accommodations comprising (Abstract):

- a processor, member in communication with the processor and containing program instructions wherein the processor executes program instructions contained in the member and the program instruction comprise (Paragraphs 26-29; Figures 1-2):

- identify a plurality of hotel (accommodation) properties, each identified hotel property being uniquely identified in memory (Figure 2, Paragraph 26);

- receiving by the processor a selected *one or more* characteristics associated with at least one of the hotel properties including at least *one* of the following: rate competitiveness (e.g. FMV – fair market value) *or* availability (Paragraph 26) *or* hotel location within a cluster (city, state, country, zip, group, etc.) *or* hotel quality within a cluster location (rating and price index of a cruise ship, cruise ship line, destination, etc.;

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cluster is the cruise line or the cruising location or a particular cruise ship within a cruise line; Paragraphs 19-22, 33, 41; Figures 5A-5c, Figure 3);

- determine by the processor a hotel (accommodation) marketability index score (rating, ranking, stars, etc.; e.g. FMV, price, price index, cruise rating) for at least one of the plurality of hotel properties, the hotel marketability index score (rating, index) comprising an ordinal (ranked, ordered, on a scale, etc.) quantifier ("the price index of a cruise is set to a scale, such as a number or letter, or a star scale...", Paragraph 48) and based on the selected one or more characteristics associated with the one or more hotel properties (Paragraphs 2-3, 17, 19-21, 45, 51, 52); and

- store the hotel marketability index score in association with a hotel property identifier corresponding to the at least one of the plurality of hotel properties in memory (Paragraphs 26, 50-52).

While Kwoh teaches store a plurality of data associated with the hotel properties in a database and while it is inherent in that storage that each of the properties must uniquely identifiable for if Kwoh did not uniquely identify the various properties (cruise ships) it would be impossible to compare them, calculate ratings or the like since it would be impossible to distinguish between them in the system//database) associated with a hotel (accommodation) property identifier stored in the memory; Kwoh does not expressly teach a "hotel property identifier" as claimed.

Schneider et al., teach a system and method for evaluating travel accommodations comprising: identifying a plurality of hotel properties, each identified hotel property being associated with a hotel property identifier stored in the memory (Claims Number 1, 7; Figure 1, Element 13; Figure 2, Element 27); and storing a hotel marketability index score (rating) in association with a hotel property identifier corresponding to the at least one of the plurality of hotel properties in memory (hotel index; Claim 1;) in an analogous art of evaluating travel accommodations.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating travel accommodations as taught by Kwok would have benefited from uniquely identifying the travel accommodations (hotel, cruise, etc.) using a hotel property identifier in view of the teachings of Schneider et al., since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

It is noted that the label used to describe the hotel score/index merely represents non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific label used to describe the score/index associated with the hotel (travel accommodation). Further, the structural elements

remain the same regardless of the label used to describe the score/index associated with the hotel (travel accommodation). Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Regarding Claims 2, 10, 16 and 22 Kwoh teaches a system and method wherein one or more of the characteristics associated with one or more hotel (accommodation) properties are selected and weighted more than one or more other characteristics such that the hotel marketability index score (score, ranking, rating, etc.) is affected (Paragraphs 20-21, 35).

Regarding Claims 3, 11, 17 and 23 teach a system and method further comprising: collecting external data associated with one or more hotel (accommodation) properties via a communications network, the external data being used to determine the hotel marketability index score (Figure 1; Paragraphs 24, 26, 43).

Regarding Claim 5 Kwoh teaches a system and method wherein the hotel (accommodation) is based on a star quality system provided by one or more reviewing entities (Paragraphs 2-4, 17, 19-21, 48).

Regarding Claim 6, 13, 19 and 24 teach a system and method wherein the system/method is accessible via a website that is operable to display one or more web pages to an end user wherein the system/method is configured for use in conjunction with navigating the website (Paragraphs 24, 27, 29, 32, 50-51; Figures 5a-5c).

Regarding Claims 8, 14 and 20 Kwoh teaches a system and method wherein data associated with the characteristics are normalized (Paragraph 46; “in order to account for extraneous values included within the data” merely recites the intended use of the normalization and has not been given patentable weight).

7. Claims 4, 12 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kwoh, U.S. Patent Publication No. 2004/0199429 as applied to claims 1, 9, 15 and 25 above, and further in view of Carro, U.S. Patent No. 7,007228.

Regarding Claims 4, 12, and 18 Kwoh teaches a system and method wherein the cluster location based on geographic information including the location of the hotel property (ports, regions of travel; Paragraph 41; Figures 6A-6B).

Kwoh does not expressly teach wherein the cluster location is based on geographic longitude and latitude coordinates as claimed.

Carro teaches wherein the cluster location is based on geographic longitude and latitude coordinates (i.e. the old and very well known utilization of geo-coding address, use of Geographic Information System; Column 3, Lines 15-45; Column 5, 35-57; Column 7, Lines 15-18; Column 8, Lines 47-50; Figure 1) in an analogous art of evaluating travel accommodations (e.g. finding travel accommodations in a certain cluster/geographic region) for the purpose of enabling users to find/locate one or more services (e.g. hotels) in a geographic area/region (cluster) without the need to know exact street names, addresses or the like; Column 3, Lines 25-29; Column 5, Lines 36-57).

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating travel accommodations as taught by Kwoh would have benefited from utilizing geographic coordinates (longitude/latitude) in view of the teachings of Carro; the resultant system/method enabling users to identify travel accommodations within a cluster without the need or limitation of specific address information (Carro: Column 3, Lines 25-29; Column 5, Lines 36-57).

Neither Kowh nor Carro expressly teach that the location is modified to account for densely populated areas associated with a selected cluster location however, these differences are only found in the non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of the specific location of the one or more hotel properties. Further, the structural elements remain the same regardless of the specific location of the one or more hotel properties. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); *MPEP* 2106.

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kwoh, U.S. Patent Publication No. 2004/0199429 as applied to claims 1, 9, 15 and 25 above, and further in view of Young et al, U.S. Patent Publication No. 2004/00098287.

Regarding Claim 7 while the modifying of data contained on websites by system administrators' is old and very well known Kwoh does not expressly teach that a system administrator modifying the data as claimed.

Young et al. teach a system and method for evaluating travel accommodations further comprising a system administrator modifying the hotel index/score (Paragraph 0030) in an analogous art of evaluation travel accommodations for the purpose of enabling system administrators override hotel property scores/index which does not reflect the system administrators understanding/desired score/index (override; Paragraph 0030).

Young et al. further teach a system and method for evaluating travel accommodations comprising: collecting a plurality of hotel property characteristics (price, availability, location, cluster, etc.), generating a marketability index for each of the one or more hotel properties, ranking the hotel properties based on one or more weighted hotel property characteristics (rating analysis, weighting analysis (Paragraphs 0009, 0014, 0030-0032, 0040) and displaying the hotel index/score.

It would have been obvious to one skilled in the art at the time of the invention that the system and method for evaluating travel accommodations as taught by Kwoh would have benefited from enabling one or more users (e.g. system administrators) to modify the hotel property score/index in view of the teachings of Young et al.; the resultant system/method enabling system administrators to override an existing hotel property index/score (Young et al.: Paragraph 0030).

Further it is noted that who 'actually' modifies the hotel index/score/rating merely represents non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements. The recited method steps would be performed the same regardless of who edits/modifies data related to the hotel properties. Further, the structural elements remain the same regardless of who edits/modifies data related to the hotel properties. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994); MPEP 2106.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Berg et al., U.S. Patent No. 7,346,858, teaches a sytem and method for evaluating travel accommodations, including but not limited to hotel properties, where a hotel marketability index score (rating, ranking, evaluation) is generated and displayed to users.

- Among et al., U.S. Patent Publication No. 2003/0110063, teach a system and method for evaluation travel accommodations.

- Jaehn et al., U.S. Patent Publication No. 2003/0125994, teach a system and method for evaluation travel accommodations, including but not limited to hotel properties/accommodations, over the Internet.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SCOTT L. JARRETT whose telephone number is (571)272-7033. The examiner can normally be reached on Monday-Friday, 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott L Jarrett/
Primary Examiner, Art Unit 3624